Supreme Court, U.S.
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No. 86-335

In The
Supreme Court of the United States
October Term, 1986

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

Petitioner,

v.

THE FIRST CHURCH OF CHRIST SCIENTIST in Boston, Mass. a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased and RUTH L. TANNER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FIRST DISTRICT OF THE APPELLATE COURT STATE OF ILLINOIS

BRIEF FOR RESPONDENT RUTH L. TANNER IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the First Amendment bars plaintiff's cause action which questions the validity of the Christian Science religion.

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MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent,

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THE FIRST CHURCH OF CHRIST SCIENTIST in Boston, Mass. a foreign corporation, THE NORTHERN TRUST COMPANY, as Executor of the Estate of PAUL A. ERICKSON, Deceased and RUTH L. TANNER,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FIRST DISTRICT OF THE APPELLATE COURT STATE OF ILLINOIS

BRIEF FOR RESPONDENT RUTH L. TANNER IN OPPOSITION

TO: The Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent, Ruth L. Tanner, a Defendant herein, respectfully requests that a writ of certiorari not be issued to review the judgment and opinion of the First District Appellate Court, State of Illinois, entered in this case on March 4, 1986.

REASONS FOR DENYING THE WRIT

I

PLAINTIFF SEEKS TO LITIGATE THE TRUTH OR FALSITY OF CHRISTIAN SCIENCE BELIEF AND DEVIATIONS THEREFROM

Contrary to the impression Petitioner attempts to create, she presented an entirely different case to the trial court (the Circuit Court of Cook County, Illinois) and the Illinois Appellate Court, First District. In Count I of her Fourth Amended Complaint, she purports to state a claim in negligence. Count II raises the same allegations in willful and wanton misconduct. Count III attempted to state a medical malpractice claim and Count IV raised a purported claim concerning Christian Science malpractice in that Erickson and Tanner did not meet the standard of care for Christian Science nurses and practitioners in the greater Chicago area in 1974. As the Illinois Appellate Court, First District, recognized, Christian Science is a Christian religion which includes the healing of disease by spiritual means of prayer. It is based not only on faith but also a positive, consistent study and application of what its adherents understand to be spiritual law. An integral part of the Christian Science worship of God involves the systematic spiritual treatment of illness. S. John, J. Peterson, *Legal Status of Christian Science Treatment,* 1964, Med. Trial Tech. & Qu., 13, 14. Said treatment is rendered by Christian Science practitioners and Christian Science nurses, *Legal Status, at 15.* The cure of disease through prayer is seen as a necessary element in a full redemption from the flesh. The Christian Scientist utilizes prayer to obtain a closer relationship to God. Cure of an illness is a subsidiary benefit once the Christian Scientist has obtained a closer relationship with God. As the Illinois Appellate Court, First District, recognized, prayer to the Christian Scientist is distinctively different than will power or mental suggestion. *Baumgartner v. First Church of Christ,* 141 Ill. App. 3d 898, 900-901, 490 N.E.2d 1319 (1986).

In *United States v. Ballard,* 322 U.S. 78, 86-87, 88 L.Ed. 1148 (1944), this Court stated:

> "Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made subject before the law .... the Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisioned the widest possible toleration of conflicting views. Man's relation to his God is made no concern of the State. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views is espoused by respondents may seem incredible, if not preposterous, to most people. But if these doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the trier of fact undertake that task, they enter a forbidden domain."

Thus, this Court and Illinois Courts have recognized that Civil Courts are incompetent to judge ecclesiastical matters. *Watson v. Jones,* 80 U.S. 679, 729, 13 Wall. 729, 20, L.Ed. 666 (1871); *Chase v. Cheney,* 58 Ill. 509, 535 (1871). As one California court has defined it, ecclesiastical matters refers to creeds and the proper mode of exercising one's belief, considerations of faith, including questions of what constitutes an essential of a church faith, and matters of church discipline, tenets, and general polity. *Metropolitan Baptist Church of Richmond, Inc. v. Younger,* 48 Cal. App. 3d 858, 121 Cal. Rptr. 899, 903 (1875). Thus, the courts do not interfere with hierarchical disputes such as whether the Serbian Orthodox Church arbitrarily defrocked a Bishop. *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 713,

49 L.Ed. 2d 151, 96 S.Ct. 2372 (1976). Even property disputes cannot be litigated in the civil courts if it involves church doctrine. *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 449, 216, L.Ed. 2d 658, 89 S.Ct. 601 (1969).

In the instant case, instead of merely asserting a property right, Petitioner has alleged claims of negligence. Her Complaint does not stop at coercion, intimidation or threats to Petitioner and her husband when they allegedly chose to withdraw from Christian Science treatment. She also alleges that Erickson and Tanner knew that John Baumgartner "needed immediate medical treatment" and that "Erickson and Tanner knew or should have known Christian Science healing was not, and could not, cure John Baumgartner after a three-inch hole developed near his rectum." The Defendants are also charged with knowledge that Christian Science treatment was not curing his illness, knew that he was going to die without medical treatment, and misrepresenting to the Baumgartners that Christian Science treatment was working.

By making such contentions, Baumgartner clearly desires a civil forum to "try" Christian Science beliefs and tenets, the Defendants' convictions in those beliefs, or in the alternative, whether Erickson and Tanner deviated from the true tenets of that religion. The truthfulness of the Christian Science religion or the Defendants' belief in such religion is protected by the First Amendment. The Court would have to determine what constitutes a true belief in a religion and what does not. The Court will not inquire into the truth or falsity of a belief. *Ballard,* at 86-87.

No matter which claim one looks at, the tenets of Christian Science doctrine cannot be divorced from the civil proceedings. No matter how the Petitioner colors her claim, Christian Science permeates the claim. This Court has stated involvement with the doctrine of a religion and disputes arising thereunder is the equivalent of excessive entanglement of state and religion. *Serbian Orthodox Diocese*, at 709. Excessive

entanglement is the impermissible merging or intermeddling of a sphere of religion in government. *See, American Civil Liberties Union v. Rabun County Chamber of Commerce, Inc.*, 510 F.Supp. 866 (N.D. Ga., 1981).

This Court, or any secular court, must involve themselves with, and evaluate the tenets of the Christian Science religion in a claim such as the one brought by the Petitioner. For instance, the Federal and State courts instead of the church would now determine what constitutes religious healing and what constitutes conventional medical treatment not permitted by the religion.

Further, the Complaint reveals Baumgartner adhered to and practiced Christian Science. He specifically requested Christian Science treatment. Both Erickson and Tanner administered Christian Science treatment and faith to him. Even assuming *arguendo* that Baumgartner actually seeks to litigate a "tortious interference" theory against the Defendants, the courts will still need to examine church belief, doctrine, etc. Such an examination would be necessitated to determine whether John Baumgartner in fact repudiated his religion during the last hours of his life. In short, the Petitioner's argument, if accepted, means the courts involve themselves with and mandate the way the Christian Scientist chooses to worship God. This would inhibit the free development of religious doctrine and implicate the secular interest in matters of purely ecclesiastical concern. In other words, there would be a "chilling effect" on the Christian Scientists' worship of religion. Adherents to said religion would not and could not freely practice their religion with the threat of civil liability hanging over their heads. This would result in the destruction of the Christian Science faith by imposing a duty upon its believers in violation of what they believe to be spiritual law. A duty in this instance would destroy the Christian Scientists' right to freely worship God. Thus, the the claims raised by Petitioner are forbidden by the First Amendment of the United States Constitution (and, for that matter, its equivalent in the Illinois

Constitution, Article One, Section Three).

Finally, as the Illinois Appellate Court recognized, Plaintiff's allegations that Erickson and Tanner persuaded the Baumgartners not to seek medical help through "coercion" and "intimidation" were conclusionary. As the Court stated:

> "The facts as alleged by Plaintiff fail to show that the Christian Science treatment provided to decedent, a competent adult, was not a matter of his own choice and free will at all times prior to his death." *Baumgartner* at 908.

(A copy of the Fourth Amended Complaint is attached hereto as a courtesy to the Court).

II

THE STATE HAS NO COMPELLING INTEREST WHICH OVERRIDES DEFENDANTS' RELIGIOUS CONDUCT

While religious conduct can be regulated by the state for the protection of society, a mere rational relationship between the regulation proposed and the legitimate end sought is insufficient to restrict religious activities. *See, Founding Church of Scientology v. United States,* 409 F.2d 1146 (D.C. Cir. 1969). As stated by the Illinois Supreme Court, religious conduct is subject only to those laws which are imperatively necessary to protect society as a whole from grave and presently imminent dangers. *In Re Estate of Brooks,* 32 Ill. 2d 361, 371, 205 N.E.2d 435 (1965).

If Plaintiff's contentions were true, then the State of Illinois could have chosen to regulate the conduct of Christian Science practitioners and nurses much in the way it regulates medical doctors or nurses. *See, e.g.,* Ill. Rev. Stat., Ch. 111, §4401, *et. seq.* Yet, the Legislature, recognizing the religious nature of treating human ailments by prayer, exempts such conduct from the licensing requirements of the Medical License Act. Ill. Rev. Stat., Ch. 111, §4474.

Moreover, Petitioner is merely trying to vindicate her own alleged private wrong under the color of "state interest" in protecting the health and welfare of its citizens. She does not cite one case in which the state protects the interests of its citizens through the method of private, civil litigation. Each case cited by the Plaintiff to show how a state interest can override religious conduct involved the *state* acting, not a private person seeking a private remedy in the state courts. Therefore, even assuming that the state has an interest in regulating the conduct of overzealous Christian Science practitioners and nurses, it is the state who must act and not a private person bringing a civil lawsuit. In short, the police power of a state cannot be delegated to private persons.

Further, the state interest in the health and welfare of its citizens is not so compelling as to override religious conduct in the case at bar. The only life at stake was the life of John Baumgartner. Illinois has recognized that a competent adult may refuse medical treatment on religious grounds, even if he knows death will result, and the state cannot interfere unless there are sufficient grounds for a compelling state interest above and beyond the patient's own life. *In Re Estate of Brooks*, 32 Ill. 2d 361, 372-373, 205 N.E.2d 435 (1965). It must be imperatively necessary to protect society as a whole from grave and presently imminent dangers. *In Re Estate of Brooks*, at 371. The nature of John Baumgartner's illness did not subject or threaten society as a whole from grave and personally imminent dangers. Nor did the instant case involve a child or incompetent who had the inability to make his own choice of treatment and could understand the consequences of religious beliefs. On the other hand, generally imposing the kind of duty Plaintiff seeks on Christian Scientists would have a disruptive effect on the Christian Science religion. Therefore, no state interest overrode his choice of Christian Science treatment.

Petitioner also argues that other religions which provide health care are subject to government regulations. Yet, this

argument fails to recognize the essential difference between Christian Science and other religious denominations sponsoring and operating hospitals. As the Petitioner herself states, these hospitals provide *conventional* medical treatment. Such care and treatment is wholly divorced from the tenets or beliefs of a sponsoring religious denomination. On the other hand, Christian Science is a religion which includes the healing of disease by spiritual means of prayer. The Christian Scientist utilizes prayer to obtain a closer relationship to God. Accordingly, there would be a direct disruption of the Christian Science religion.

CONCLUSION

Respondent, Ruth L. Tanner, respectfully submits that the First District of the Illinois Appellate Court correctly determined that Plaintiff's claim is forbidden by the First Amendment of the United States Constitution. Further, the State had no compelling interest in protecting the health and welfare of its citizens by allowing a private person to litigate allegedly tortious conduct. A fair reading of her Complaint reveals that she, in essence, is seeking a civil forum to try the truth or falsity of the Christian Science belief, or that of the Defendants' faith. This is strictly forbidden by the First Amendment. Further, as demonstrated above, the state does not have such an interest in the health and welfare of a competent adult who freely chooses Christian Science religion such that an opinion by this Court to "draw the parameters" of the First Amendment is needed.

WHEREFORE, for all of the foregoing reasons, Defendant-Respondent, Ruth L. Tanner, respectfully prays that this Court deny the Petition for Writ of Certiorari to the First District of the Appellate Court, State of Illinois.

Respectfully Submitted,

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APPENDIX

STATE OF ILLINOIS

COUNT OF COOK

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

MARY BAUMGARTNER, as Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the decedent,

Plaintiffs

vs.

THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (The Mother Church), a foreign corporation; THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased; and RUTH L. TANNER,

Defendants

No. 80 L 29451

FOURTH AMENDED COMPLAINT AT LAW

Now comes MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, minor children of the Decedent, by and through her attorneys, HINSHAW, CULBERTSON, MOELMANN, HOBAN & FULLER, and complains of defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (THE MOTHER CHURCH), THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON (Paul A. Erickson) and RUTH L. TANNER, as follows:

COUNT I

1. Defendant, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, (THE MOTHER CHURCH), was founded by Mary Baker Eddy in 1879. Its basic premise is that physical disease can be healed by spiritual means alone. Followers of the religion do not use medical aid to treat illness and rely upon Christian Science healing.

2. The Mother Church trains practitioners and nurses who are sent out to heal illnesses among its members. Practitioners and nurses trained and approved by the Mother Church are listed in *The Christian Science Journal,* a publication of the organization. By listing practitioners and nurses in the *Journal,* The Mother Church certifies their training and competence.

3. Practitioners and nurses working in the field for The Mother Church are required to recruit new members for it and to solicit funds for The Church through donations or testamentary bequests.

4. Practitioners and nurses charge for healing services they render. They are professionals and they are expected by The Mother Church to earn their living from healing.

5. The practice of Christian Science healing by practitioners and nurses is directed and controlled by The Mother Church and they must follow specific guidelines, procedures and regulations promulgated by the Church when providing Christian Science treatment. Practitioners and nurses who fail to do so are disciplined by The Mother Church.

6. In October of 1974, defendant, PAUL A. ERICKSON, was a Christian Practitioner who had been instructed by The Mother Church in the ways of Christian Science healing and was listed in *The Christian Science Journal.* Erickson practiced Christian Science healing in and around Aurora, Illinois.

7. In October of 1974, defendant, RUTH L. TANNER, was a graduate Christian Science nurse certified by the

Department of Care of the Mother Church. Tanner was listed in *The Christian Science Journal* and practiced Christian Science healing in and around Naperville, Illinois.

8. At all times when defendants ERICKSON and TANNER practiced Christian Science healing and in particular when they were treating JOHN BAUMGARTNER, they were acting as agents of The Mother Church under its supervision and control.

9. Prior to October of 1974, Ruth L. Tanner received a degree in medical nursing from Copley Memorial Hospital, Aurora, Illinois and, thereafter, she practiced her profession at Copley Memorial Hospital and in the Chicago area as a visiting nurse.

10. Prior to October 1974, Paul A. Erickson sought and obtained medical treatment for his own illnesses and injuries while holding himself out as being a Christian Science practitioner.

11. JOHN BAUMGARTNER was a wealthy inventor and industrialist. He founded the Anchor Brush Company that was formerly headquartered near Aurora, Illinois. At the time of his death in October of 1974, he was living near Plano, Illinois with his wife, Mary, and their two minor children, David and Debra.

12. Prior to October of 1974, Paul A. Erickson had treated JOHN BAUMGARTNER for minor illnesses and had counseled him on business and personal matters.

13. Prior to October of 1974, JOHN BAUMGARTNER's wife, Mary, had been a member of Erickson's association within the Church and he was her teacher and advisor on Christian Science.

14. Prior to October of 1974, JOHN BAUMGARTNER changed his Will at the insistence of PAUL ERICKSON and made The Mother Church a residual beneficiary of approximately one half of his estate which

was worth several million dollars. The Mother Church knew of the provisions of the Will and that it would receive a substantial sum of money at his death.

15. On October 13, 1974, JOHN BAUMGARTNER contracted acute prostatitis while driving his family home from a trip to St. Louis, Missouri. The illness manifested itself through severe pain in the groin area and the inability to urinate. Prostatitis can be treated medically through simple surgery and medication.

16. After arriving at his home near Plano, Illinois, JOHN BAUMGARTNER called PAUL ERICKSON, advised him of his illness, and requested ERICKSON to provide him with Christian Science treatment. ERICKSON had provided BAUMGARTNER with Christian Science healing on several other prior occasions.

17. ERICKSON came to the BAUMGARTNER home immediately that same night. He locked himself into a bathroom with the decedent and administered hot baths and Christian Science treatment to him. Erickson also massaged and manipulated JOHN BAUMGARTNER'S prostate gland.

18. For the next several days BAUMGARTNER'S condition remained unchanged. He continued to have severe pain in the groin area and he could not eliminate body wastes.

19. PAUL ERICKSON contacted RUTH TANNER and directed her to go to the BAUMGARTNER home to assist in treating the decedent. ERICKSON called daily to check on BAUMGARTNER'S condition and he visited frequently to provide treatment. TANNER also provided Christian Science treatment to the decedent.

20. On or about October 20, 1974, JOHN BAUMGARTNER asked Mary to inspect an opening he felt in his rectum. She looked and observed an internal organ protruding from a three inch opening in his rectum. RUTH TANNER was present and she placed a dressing on the

wound made from sanitary napkins. She also instructed MRS. BAUMGARTNER on how to clean the wound and to replace the dressing.

21. After the wound developed, JOHN BAUMGARTNER decided that he wanted medical treatment for his illness and that he no longer wished to be treated by Erickson and Tanner. The decedent asked his wife, Mary, to call in a physician and to advise Erickson and Tanner that he had withdrawn his consent to further treatment by them.

22. MARY BAUMGARTNER called Paul Erickson and advised him that the decedent wanted medical treatment for his illness and that she was going to call a physician in for him. She also requested Erickson and Tanner to withdraw from the case because JOHN BAUMGARTNER was withdrawing his consent to further treatment by them.

23. Erickson arrived at the BAUMGARTNER home within a few minutes after his telephone conversation with MRS. BAUMGARTNER. He took her into the kitchen of the home out of the presence of the decedent and shouted at her that he was the doctor, that she was his nurse and student and, as such, she was to follow his orders. His orders were that no medical doctor would be brought in to treat the decedent. Erickson threatened MRS. BAUMGARTNER that if she even talked to a physician, her husband would be sure to die and it would be her fault. Erickson told MRS. BAUMGARTNER that Christian Science treatment was curing the decedent.

24. Erickson went into the decedent's bedroom and repeated his threats to JOHN BAUMGARTNER that he would die if a medical doctor was called and Erickson told him that he was being cured by Christian Science healing.

25. ERICKSON and TANNER continued to treat MR. BAUMGARTNER and they continued to assure the BAUMGARTNERS that the decedent was being cured by their Christian Science treatment even though he had devel-

oped a three-inch hole near his rectum through which internal organs protruded.

26. No medical doctor was called in to treat MR. BAUMGARTNER. His condition continued to deteriorate and he died several days later.

27. MARY BAUMGARTNER paid the fees charged by TANNER and ERICKSON for their healing services.

28. Erickson and Tanner knew or should have known that JOHN BAUMGARTNER needed immediate medical treatment to survive his illness after a three-inch hole developed near his rectum out of which internal organs protruded.

29. That Erickson and Tanner knew or should have known that Christian Science healing was not and could not cure JOHN BAUMGARTNER after a three-inch hole developed near his rectum out of which internal organs protruded.

30. Defendants owed to JOHN BAUMGARTNER the duty of not interfering with his right to obtain medical care to protect his health and safety.

31. Defendants, each and every one, were guilty of one or more of the following wrongful acts and/or omissions of negligence:

(a) Failed to withdraw from treating JOHN BAUMGARTNER when requested to do so.

(b) Failed to withdraw from treating JOHN BAUMGARTNER after being requested to do so when they knew or should have known that Christian Science treatment was not curing the decedent's illness.

(c) Failed to consult with a medical doctor when requested to do so.

(d) Failed to consult with a medical doctor when they knew or should have known that JOHN BAUMGARTNER was going to die without immediate medical treatment.

(e) Advised JOHN BAUMGARTNER and his family not to obtain medical care when they knew or should

have known that BAUMGARTNER was going to die without immediate treatment by a physician.

(f) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing BAUMGARTNER when they knew or should have known that it was not and could not cure his illness.

(h) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through abuse of their fiduciary relationships with the BAUMGARTNERS by controlling their minds and actions.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, no medical doctor was called in to treat JOHN BAUMGARTNER and he died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful Death Action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of the decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased,

and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT II

1. – 30. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 30 of Count I of this complaint as and for her allegations in paragraphs 1 through 30 of Count II of this complaint.

31. Defendants, each and every one, acted intentionally or with reckless disregard to deprive JOHN BAUMGARTNER of medical care and to cause his death to gain substantial sums of money from his estate through one or more of the following wrongful acts:

(a) Refused to withdraw from treating JOHN BAUMGARTNER when requested to do so.

(b) Refused to withdraw from treating JOHN BAUMGARTNER after being requested to do so when they knew or should have known that Christian Science treatment was not curing the decedent's illness.

(c) Refused to consult with a medical doctor when requested to do so.

(d) Refused to consult with a medical doctor when they knew or should have known that JOHN BAUMGARTNER was going to die without immediate medical treatment.

(e) Advised JOHN BAUMGARTNER and his family not to obtain medical care when they knew that BAUMGARTNER was going to die without immediate treatment by a physician.

(f) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through threats, coercion and intimidation.

(g) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor by misrepresenting to them that their Christian Science treatment was curing

BAUMGARTNER when they knew that it was not and could not cure his illness.

(h) Stopped JOHN BAUMGARTNER and his family from calling in a medical doctor through abuse of their fiduciary relationships with the BAUMGARTNERS by controlling their minds and actions.

32. As a direct and proximate result of one or more of the foregoing intentional or reckless wrongful acts and omissions of defendants, no medical doctor was called in to treat JOHN BAUMGARTNER and he died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illinois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT III

1. – 29. Plaintiff hereby adopts, reasserts, and realleges the allegations contained in paragraph 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count III of this complaint.

30. Defendants provided medical care to JOHN BAUMGARTNER by massaging and manipulating his prostate gland and by treating his open wound and therefore assumed voluntarily the duty to act in accordance with accepted standards of prevailing medical practice in the greater Chicago area in 1974.

31. Defendants each and every one, were guilty of the following wrongful acts and/or omissions of negligence:

a) Failed to diagnose and treat JOHN BAUMGARTNER'S illness;

b) Failed to consult with persons having greater medical knowledge and expertise concerning the illness of JOHN BAUMGARTNER;

c) Provided medical treatment without having received the requisite training and instruction in medicine;

d) Failed to provide proper medical treatment to JOHN BAUMGARTNER for prostatitis.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, JOHN BAUMGARTNER died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall County, Illnois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiffs, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, pray for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

COUNT IV

1. - 29. Plaintiff hereby adopts, reasserts and realleges the allegations contained in paragraphs 1 through 29 of Count I of this complaint for her allegations in paragraphs 1 through 29 of Count III of this complaint.

30. That defendants ERICKSON and TANNER had a duty to treat the decedent, JOHN BAUMGARTNER, in accordance with the accepted standards of prevailing Christian Science practice and opinion in the greater Chicago area in 1974, and, to exercise that degree of care and caution commonly exercised by other members of their profession in the community

31. THAT PAUL A. ERICKSON and RUTH L. TANNER were then and there guilty of one or more of the following wrongful acts and/or ommissions of carelessness and negligence:

a. Failed to consult with a medical doctor concerning the illness of JOHN BAUMGARTNER and the anatomy involved when they were unable to heal or cause an improvement in the Decedent's condition in violation of Article VIII, §23 of the Manual of The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts;

b. Ignored requests that a medical doctor be called in to examine and treat the Decedent's illness in viola-

tion of the ethics of Christian Science Practitioners and Christian Science Nurses;

c. Assured JOHN BAUMGARTNER and MARY BAUMGARTNER that there was nothing wrong with his physical condition when they knew or should have known it was fatally deteriorating;

d. Intimidated and coerced the BAUMGARTNERS and caused them to refrain from calling in a medical doctor to treat the Decedent;

e. Failed to consult with the medical doctor to treat the Decedent;

f. Failed to consult with a medical doctor concerning the Decedent's illness when they knew or should have known that their metaphysical treatment did not heal and was not causing any improvement in the Decedent's condition;

g. Failed to inform JOHN BAUMGARTNER and his wife, MARY BAUMGARTNER, of the seriousness of his physical ailments;

h. Advised JOHN BAUMGARTNER and his wife, MARY BAUMGARTNER, to abstain from seeking medical care for his illness; and

i. Failed to discontinue treatment after consent to it was withdrawn.

32. As a direct and proximate result of one or more of the foregoing wrongful acts and omissions of defendants, JOHN BAUMGARTNER died on October 23, 1974.

33. JOHN BAUMGARTNER left surviving him two minor children, DAVID BAUMGARTNER and DEBRA BAUMGARTNER, both of whom sustained pecuniary loss and damages as a result of his death.

34. MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, brings herewith letters of office granted her by the Probate Court of Kendall

County, Illnois, as evidence of her right to bring this wrongful death action, pursuant to Chapter 70, §1 and §2.

WHEREFORE, plaintiff, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Deceased, on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent, prays for judgment against defendants, THE FIRST CHURCH OF CHRIST, SCIENTIST, in Boston, Massachusetts, THE NORTHERN TRUST COMPANY as Executor of the Estate of PAUL A. ERICKSON, Deceased, and, RUTH L. TANNER, in the sum of FIVE MILLION ($5,000,000) DOLLARS.

HINSHAW, CULBERTSON,
MOELMANN, HOBAN & FULLER

By: _____
Attorneys for plaintiffs, MARY BAUMGARTNER, Executor of the Estate of JOHN BAUMGARTNER, Dec., on behalf of DAVID BAUMGARTNER and DEBRA BAUMGARTNER, the minor children of decedent

69 West Washington Street
Chicago, Illinois 60602
630-4400

STATE OF ILLINOIS
COUNTY OF COOK

The undersigned, after being first duly sworn on oath deposes and says that she served the above and foregoing FOURTH AMENDED COMPLAINT AT LAW be depositing in the U.S. Mail Chute at 69 W. Washington Street, Chicago, Illinois a true and correct copy thereof, in a sealed envelope, first class postage prepaid, addressed to: WILDMAN, HARROLD, ALLEN & DIXON, One IBM Plaza, Chicago, IL French, Rogers, Kezelis & Kominiarek, 33 North Dearborn, Chicago, IL Matthews, Dean & Eichmeier, P.O. Box 1304, Aurora, IL 60507

on the 23rd day of February, 1983

Subscribed ad Sworn to before
me this 23rd day of February,
1983.

NOTARY PUBLIC